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Sixty-third session

SUMMARY RECORD OF THE 1689th MEETING

Held at the Palais des Nations, Geneva,
on Friday, 24 July 1998, at 10 a.m.

Chairperson: Ms. CHANET

later: Mr. EL SHAFEI
(Vice Chairperson)

later: Ms. CHANET
(Chairperson)

CONTENTS

CONSIDERATION OF REPORTS SUBMITTED BY STATES PARTIES UNDER ARTICLE 40 OF THE COVENANT (continued)

Third periodic report of the United Republic of Tanzania

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GE.98-17097 (E)

The meeting was called to order at 10.10 a.m.

CONSIDERATION OF REPORTS SUBMITTED BY STATES PARTIES UNDER ARTICLE 40 OF THE COVENANT (agenda item 4) (continued)

Third periodic report of the United Republic of Tanzania (CCPR/C/83/Add.2; CCPR/C/63/Q/URT/1/Rev.1)

1. At the invitation of the Chairperson, Mr. Malambugi and Mr. Kalanje (United Republic of Tanzania) took places at the Committee table.

2. The CHAIRPERSON welcomed the delegation of the United Republic of Tanzania and invited the head of delegation to make an introductory statement.

3. Mr. MALAMBUGI (United Republic of Tanzania) said it was unfortunate that the final list of issues to be taken up in connection with the consideration of his delegation's report (CCPR/C/63/Q/URT/1/Rev.1) had been received only a short time previously and that his delegation had been unable to undertake the necessary consultations to respond adequately to all the questions raised. Since not all missions had computer connections to their capitals and had to rely on more traditional methods of communication, he proposed that the list of issues be made available to the reporting State at least three months before the date on which the report was to be considered so as to give the delegation concerned time to prepare the responses.

4. The most important development since the consideration of Tanzania's second periodic report in 1992 had been the reintroduction of political pluralism after more than two decades of single-party rule. Elections for local government councils in 1993 and general elections for the presidency and the parliament in October 1995 had already been contested on a multi-party basis. The ruling party, Chama cha Mapinduzi (CCM), had emerged victorious in both elections.

5. The expansion of democracy with the entry of other actors into the political arena had been accompanied by greater government liberalism in allowing for the operation of privately owned newspapers, radio and television stations, which had mushroomed overnight. It was testimony to the changing times that there were currently many more privately owned media than government-controlled ones.

6. The judiciary had taken a proactive role in defending human rights. Judges did not hesitate to strike down any legislation found to be contrary to the Constitution. As the population became more aware of human rights, litigation on the subject was increasing.

7. The introduction of multi-party politics had not, however, been without its teething problems. Losers, on either side of the political spectrum, did not readily accept their fate. That was why, more than two and a half years into the five-year mandate of the current Parliament, election petitions were still being submitted. Only a week previously, a prominent minister had lost his portfolio as a result of a successful petition by his constituency opponent. The overwhelming number of petitions had clogged up the court system. The hiring of acting judges to expedite them had been a palliative only, with the consequence that ordinary cases were piling up in the High Court.

8. In Zanzibar, despite the magnanimity of the ruling party in offering the opposition a role in government, an offer that had promptly been rejected, the losing party was likewise refusing to accept the results of the presidential elections and was boycotting sessions of the House of Representatives as well as conducting actions of passive resistance which often ended up in the commission of common crimes. It was hoped that efforts by the Secretary-General of the Commonwealth to mediate in that stand-off would result in an acceptable compromise.

9. Since much of what was currently taking place in his country emanated from the adoption of the Nyalali report, he wished to describe it briefly. The principal terms of reference given to the Nyalali Commission had been to ascertain the views of Tanzanians in respect of the desirability of continuing with a one-party State, to consider the pros and cons of changes in the political set-up and to recommend ways in which the basic principles of democracy could be established and expanded. It had been mandated to examine, and to recommend any necessary changes to, the Constitutions of the United Republic of Tanzania and Zanzibar and any other relevant legislation. It had been requested to examine in detail the question of whether any changes in the position of Zanzibar in the Union would be in Zanzibar's interests, taking into account its history, politics and culture.

10. The major findings of the Nyalali Commission had been that the two Constitutions had many shortcomings and that some of the laws of the two countries were flawed. To rectify those shortcomings, the Commission had recommended that certain articles of the two Constitutions be repealed so as to remove the constitutional monopoly of political power by the ruling party. Both Governments had agreed to that proposal and the offending articles had been duly expunged.

11. In order to give effect to the Commission's recommendations and to introduce political pluralism, the Government had promulgated amendments to the Constitution that were applicable to both parts of the Union. It had also undertaken and continued to undertake the necessary amendments to other pieces of legislation so as to expand the enjoyment of human rights by Tanzanians.

12. Lastly, the Nyalali Commission had identified 40 pieces of "repressive" legislation, which either denied or constrained the rights and freedoms of the people, and they had been referred to the Law Reform Commission for in-depth analysis. The Commission had finalized its review and released the results a week previously. The Tanzanian Government had not accepted one major recommendation of the Nyalali Commission, the establishment of a federal system composed of a federal government plus the Governments of Tanzania and Zanzibar, on the grounds that such a move would weaken the Union and entail a heavy financial outlay.

13. Turning to the list of issues (CCPR/C/63/Q/URT/Rev.1), he said that, as a common-law country, the United Republic of Tanzania did not automatically apply international conventions without incorporating them into domestic legislation. In principle, therefore, the provisions of the Covenant could not operate as a direct source of individual rights or be invoked in courts of law. Nevertheless, Tanzanian courts were prepared to be guided by the letter and spirit of human rights instruments ratified by the Government and, though the Covenant could not be cited by name, the courts did apply its underlying principles in their decisions.

14. With respect to paragraph 2 of the list of issues and the complex matter of customary law, he said that a review had been made of laws that were incompatible with international human rights instruments. The Government was currently engaged in enacting new legislation on inheritance and land law geared towards eliminating gender inequalities and other biases. Significant amendments to the Penal Code included the enactment of special provisions regarding sexual and other offences so as to create further safeguards for the personal integrity, liberty and security of women and children, to impose punishment on guilty parties and to ensure compensation and protective measures for victims. Female genital mutilation had been made a criminal offence under the Penal Code.

15. One of the problems in dealing with sexual offences was the fact that cases were heard in open court and many victims were unwilling to denounce the offences due to the negative publicity and the stigma attached to the victim. It was hoped that the promulgation of the Sexual Offences Act, allowing for the hearing of such cases in privacy, would remedy that situation.

16. There were no legal restrictions on equal access by women to employment but, in actual practice, owing to their lack of education women did not stand as good a chance of obtaining employment as men. They usually dropped out of school and there were fewer schools for girls than for boys. While parity of enrolment of boys and girls in primary schools had been achieved, there was a major discrepancy at the higher educational levels. The Government was trying to rectify that situation, however, and had taken affirmative action to lower the pass mark for girls so that more of them could enter secondary school and, where possible, boys' schools had been opened for the enrolment of female pupils.

17. As a measure of its commitment to gender equality, the Government was considering ratification of ILO Conventions Nos. 100 and 101 on equal remuneration and discrimination, respectively. In Zanzibar unmarried women who became pregnant were liable to imprisonment for three years. Men who impregnated women outside marriage were liable to five years' imprisonment.

18. With respect to paragraph 3 of the list of issues, he said that the term "absolute necessity" had never been clarified in practice, since no state of emergency had ever been declared in his country and it was not possible, therefore, to explain the circumstances in which it would be used. Section 31 (3) of the Constitution prohibited deprivation of life, with the sole exception of death arising from acts of war. It would thus appear that the President had no power to derogate from the right to life. Section 31 was, however, one of the provisions recommended for review by the Nyalali Commission.

19. The Government of the United Republic did not release figures on the number of people executed. The death penalty existed both on the mainland and in Zanzibar, but was not carried out on minors. Since the revolution of 1964, the death penalty had never been imposed in Zanzibar. While understanding the sentiments of the abolitionists, the Government needed the death sentence on its statute book as a deterrent.

20. The law prohibited mob justice, whether meted out to suspected thieves or to suspected witches: such cases were accordingly dealt with by the Penal Code. Concerning the death of a member of the Civic United Front (CUF) in 1993, the policeman who had fired the lethal bullet had been arrested and charged with murder. The shooting had taken place during a riot, however, and the court had found that the act had been an unintentional one. The accused had been discharged, but administrative steps had been taken to dismiss him from the police force. The fatal shooting had been largely the result of poor training in riot-control methods and a lack of appropriate gear: riots had not often been experienced during single-party rule. To avert any repetition, the Government had procured riot-control gear, including rubber bullets.

21. Corporal punishment was imposed by the courts both on the mainland and in Zanzibar in conformity with the Corporal Punishment Ordinance and was administered in schools for serious breaches of school discipline. Strokes, which should not exceed six, were administered by striking the pupil's hand or normally clothed buttock using a flexible stick. Female pupils received such punishment from female teachers; where none was available, written authorization from the head of the school was required. The statute providing for corporal punishment was among the 40 pieces of "repressive" legislation recommended for review or repeal.

22. Answering the questions in paragraph 4 of the list of issues, he said that, according to the United Nations High Commissioner for Refugees (UNHCR), the United Republic was currently hosting 267,000 refugees from Burundi, 47,000 refugees from the Democratic Republic of the Congo, 5,500 refugees from Rwanda and 3,000 to 4,000 refugees from Somalia. The Government estimated that an additional 500,000 or more refugees had settled spontaneously in the country but were not recognized by UNHCR because they were self-sufficient.

23. For security reasons deriving from the militarization of the refugee camps, the movement of refugees had had to be confined to the camps. Children born in the camps to refugee women were registered by UNHCR and inherited both the refugee status and the citizenship of their parents.

24. Concerning paragraph 5, he said that section 12 (6) (e) of the Zanzibar Constitution prohibited torture or inhuman or degrading treatment or punishment. The Government of Zanzibar was very careful about its handling of political figures and did not ill-treat them for fear of negative publicity. Investigations carried out by the authorities in response to complaints from the Special Rapporteur on questions related to torture invariably showed that those complaints were not well founded and were mainly politically inspired.

25. Turning to paragraph 6 of the list of issues, he said that, owing to the shortage of time for the preparation of replies, he had no information on the number of cases of people detained under the Preventive Detention Act or the length of such detentions. The Act was very rarely invoked, however, and was one of those identified by the Nyalali Commission as being inimical to the enjoyment of human rights in Tanzania. In the eight years since the current President had assumed power, no one had been detained in Zanzibar under the Act.

26. In reply to the questions in paragraph 7, he said that prison conditions had deteriorated due to the economic problems facing the United Republic of Tanzania. Since independence, the Government had not built enough new prisons to keep up with the population increase, and there was serious overcrowding in almost all prisons. Prisoners received medical care, however, and the basic philosophy was to rehabilitate them so that they could become better citizens. Prisoners were consequently given training in practical skills so that they would be able to cope when released. To relieve congestion, the Government had adopted legislation to introduce a parole system, and the courts were encouraged to hand down non-custodial sentences whenever possible.

27. There was no prisons inspectorate, but inspections were supposed to be carried out on a monthly basis by visiting magistrates and judges so that they could review prison conditions and recommend remedial measures. There had, indeed, been deaths in prison, the result of natural causes: where there were any grounds for suspecting foul play, an inquest was held to establish the cause of death and take any legal action if needed.

28. The CHAIRPERSON said that the delegation of the United Republic of Tanzania appeared to have misunderstood the procedure followed by the Committee in considering reports, since the introductory statement by the head of the delegation had, in fact, answered a number of the questions in the list of issues. The purpose of the list was to structure the oral discussion and, since answers had already been given to the questions in paragraphs 1 to 7 of the list, she invited the members of the Committee to ask any follow-up questions they might have.

29. Lord COLVILLE said that the mandate of the Nyalali Commission had primarily been to review the single-party system. That review had resulted in reforms which, in terms of article 25 of the Covenant, were clearly improvements on the previous situation and enabled citizens to participate in political life without unreasonable restrictions. The Committee applauded those advances and hoped that they would help to overcome the "teething" problems mentioned by the head of the delegation.

30. The Committee would, however, like to hear about some of the other important issues that had been addressed by the Nyalali Commission. For instance, some account of the other subjects covered by the 40 pieces of legislation identified as requiring reform and referred to the Law Reform Commission would be of interest. He would like to know whether, upon completion of the work of the Nyalali Commission and of the Law Reform Commission, there was any overall strategy for further review and whether a parliamentary committee or other organ had been envisaged to undertake an ongoing review of legislation in terms of its compliance with human rights requirements as a separate exercise from the work of the Constitutional Court, which could only extrapolate, slowly and laboriously, from the individual cases submitted to it.

31. Noting that the legal system, both on the mainland and in Zanzibar, was still clogged up by cases arising from the elections of October 1995, he said that it would be useful to have an idea of the size of the backlog. Was it still growing, and was the judiciary able to keep pace with it? Had it led to

long delays in criminal trials? He would also welcome further information about the practice of hiring acting judges to help the judiciary keep up with its workload and, in particular, about what was being done to ensure that the independence and educational level of the acting judges were adequate. Were the criteria for appointing acting judges as strict as those governing the appointment of regular judges?

32. Mr. El Shafei, Vice-Chairperson, took the Chair.

33. Mr. PRADO VALLEJO said that, while he welcomed the significant advances achieved in the political field in Tanzania since the second periodic report, there were some aspects of the third report that still gave grounds for concern. Paragraph 7, for instance, spoke of restriction on the registration of political parties which were based on religion or tribalism or based on only one region of the country. It would be helpful if the delegation could expand further on the reasons for that restriction.

34. According to paragraph 47, the right to life could apparently be suspended under certain circumstances. If so, that was surely in flagrant contradiction with the fundamental principle set forth in article 4 of the Covenant. He hoped that the delegation would provide full clarification on that point.

35. Paragraph 57 referred to the possibility of certain categories of detainees being held incommunicado for limited periods of time. Experience in other countries showed that it was precisely during periods of incommunicado detention that the worst abuses tended to occur, and an explanation was thus called for.

36. According to paragraph 61 of the report, corporal punishment, which had been abolished in 1972, had been brought back in 1989 and was administered in cases of certain violent offences. That state of affairs was clearly inconsistent with article 7 of the Covenant. Noting that the Nyalali Commission had questioned the appropriateness of maintaining corporal punishment (para. 63), he invited the delegation to explain the reasons for its reintroduction.

37. While appreciating Tanzania's difficulties in the face of the problem of large numbers of refugees from neighbouring countries, he considered that some of the Government's reactions to the problem were unacceptable and should not recur. There were reports that certain refugees from Burundi had been handed over to the authorities of that country in January 1997 and had been immediately executed. That was unquestionably contrary to the principle of asylum and the protection of refugees. It was also reported that many Rwandan refugees had gone into hiding in Tanzania for fear of being returned to their country where they, too, faced possible death.

38. What was the Tanzanian Government's policy on the refugee issue? What measures was it taking, or planning to take, to control the serious violence said to be widespread in the refugee camps? Lastly, was it correct that Tanzania did not allow refugee families to reunite, and if so, for what reason? Family reunification was an important humanitarian principle that should be respected wherever possible.

39. Ms. Chanet resumed the Chair.

40. Mr. BHAGWATI said that Tanzania's third periodic report was, perhaps, a little lacking in details of the practical application of the Covenant, but that shortcoming had to some extent been offset by the delegation's introduction. The first set of supplementary questions he wished to ask related to the judiciary. What was the representation of women in the judiciary? Had any changes been made, in view of the Law Reform Commission's recommendations, to the existing inheritance and land ownership laws for women, and if not, did the Government have any plans to bring about gender equality in those areas?

41. Noting that the power of appointment, promotion and dismissal of magistrates was vested in the President, who exercised it in consultation with the Chief Justice, he asked whether the advice of the Chief Justice was binding upon the President in all cases. Were magistrates given opportunities for further training, especially in the field of human rights, after their appointment? Were there special seminars or conferences for judges, including High Court judges and judges of the Court of Appeal? That point was of particular importance in view of the fact that not all of the rights under the Covenant were incorporated in the Constitution of Tanzania.

42. In other Commonwealth countries, steps were taken to acquaint judges with ways in which provisions of international instruments not found in the Constitution could be incorporated into domestic law through a process of interpretation. Similar action should be taken in Tanzania. For his part, he would like to see all the rights covered by the Covenant incorporated into the Constitution, and he wondered whether any recommendation to that effect had been made by the Law Reform Commission.

43. Was any provision made for legal assistance to persons charged with a criminal offence in accordance with article 14, paragraph 3, subparagraph (d), of the Covenant? What was the maximum period of pre-trial detention, and how long did it normally take for a defendant to be brought to trial? Did the victims of unlawful detention receive compensation in accordance with article 9, paragraph 5?

44. Turning to the question of the rights of persons in the position of refugees, he associated himself with the comments made by Mr. Prado Vallejo and asked whether the Minister for Home Affairs, when deciding upon an applicant's refugee status, was obliged to follow the advice of the National Eligibility Committee. What was that Committee's composition? Was there any possibility of appeal against the Minister's decision? In determining refugee status, did the Minister follow the definition provided in the 1951 Convention relating to the Status of Refugees or the much wider definition adopted by the Organization of African Unity (OAU)? In the case of assisted refugees, was some of the assistance provided by UNHCR or did the Government bear the entire burden?

45. Was it true that foreign citizens, including some who had lived in Tanzania for more than 10 years, were sometimes rounded up and taken to refugee camps where they were not allowed to engage in any form of work, even small-scale farming? Where were asylum seekers held until their status had

been determined by the Minister? Were there special reception centres, and if so, how many? What were the conditions in such centres? Was it true that a refugee who committed an offence could be remanded in custody for several months or even years?

46. Mr. ZAKHIA asked whether the Law of Marriage Act of 1971 referred to in paragraph 30 of the report was compulsory and, if not, whether the Government was envisaging any steps to encourage the more developed sections of society to adopt marriage practices based on the equality of the sexes. If a Tanzanian citizen married abroad under a law which conflicted with Tanzanian customary law, which of the two laws would prevail?

47. Referring to the problem of single women who became pregnant, he asked whether there was not a risk of clandestine abortions that could endanger the lives of both mothers and children. He invited the delegation to provide figures concerning abortions and the deaths consequent upon them.

48. Ms. GAITAN DE POMBO said that the fact that children were not allowed to take part in armed conflict was particularly important in view of the growing militarization of the refugee camps. The delegation had provided some overall figures for the refugee population, but she would like some more detailed statistics about refugee children. What was their precise status, and how were they registered? What was the Tanzanian Government's policy with regard to foreigners not recognized as refugees by UNHCR?

49. Mr. KLEIN said that, while the submission of the third periodic report of Tanzania was to be welcomed, he was somewhat disappointed by the scant information the report contained about the actual practice and jurisprudence in human rights matters. While joining previous speakers in recognizing the importance of Tanzania's return to a multi-party system, he noted that not very much progress had been made since the Nyalali Commission's recommendations of 1992. The recommendations of the Law Reform Commission had not yet been implemented and it was unclear to what extent they would be implemented in the future.

50. While he accepted Tanzania's commitment to the principle of the rule of law, as formulated in paragraph 145 of the report, there could be no doubt, however, that many existing laws were clearly in contradiction with the Covenant, and he was disappointed by the continuance of such violations, of which the Government appeared to be aware. Tanzania was a common-law country, which meant that provisions not incorporated in domestic law could not be invoked, but that did not affect Tanzania's international obligations or the international responsibility it incurred by breaching them. In that connection, he asked whether the United Republic of Tanzania continued to operate a dual system of statute law and customary law, so that people could choose to marry, for example, under either regime.

51. While he welcomed the statement in paragraph 60 of the report that persons were not expelled to countries where they might be subjected to torture he noted that an exception was made in the case of countries with which an extradition treaty had been concluded. Since the principle involved had the status of jus cogens, it took precedence over extradition treaties.

52. Associating himself with Mr. Prado Vallejo's remarks on corporal punishment, he said it was most distressing that the practice had been reintroduced in 1989 - 13 years after the United Republic of Tanzania had ratified the Covenant. The delegation had mentioned that corporal punishment was administered in cases of rape and robbery. Were those the only cases and was it supplementary to other forms of punishment? How frequently was it used in practice?

53. According to paragraph 79 of the report, the President was empowered under the Deportation Ordinance to deport a person who was conducting himself in a manner that might lead to public unrest. How frequently had that Ordinance been used? Was there any possibility of a judicial review in such cases?

54. The delegation had admitted that there was serious overcrowding in Tanzanian prisons. Economic constraints could not be invoked to justify a violation of article 10 of the Covenant. What steps were being taken to remedy the situation and to protect prisoners against violence by fellow inmates, a phenomenon that was frequently associated with overcrowding.

55. Mr. KRETZMER said that paragraph 44 of the report asserted that the use of firearms by the police and security forces was strictly controlled. There were many allegations, however, that people had been gunned down by the police or shot dead while in custody. Alleged incidents included the death in custody of six persons suspected of robbery at Arusha in January 1998, the shooting of two persons in Mwembechai in February 1998 and of one person in Mbezi Temboni, and the shooting of a suspect as he attempted to escape from custody. He would like to know who investigated allegations that the police were not observing the rules of conduct and whether there was any provision for an independent inquiry.

56. Tanzanian non-governmental organizations (NGOs) alleged that beatings of detainees had become almost standard practice in police stations. What form of monitoring existed to prevent police officers, who were perhaps inadequately trained or unaware of the relevant legal rules, from engaging in such conduct?

57. Paragraph 55 of the report referred to provisions prohibiting illegal forms of search and arrest. What was the status of evidence obtained as a result of such illegal procedures? Would it be thrown out by the courts?

58. As admitted in the report, the Preventive Detention Act had been severely criticized. He asked for more details concerning a detainee's right to challenge his detention in the courts, if possible with reference to specific cases.

59. In view of the prevailing attitudes and customs in Tanzanian society, as described in the report and the delegation's introductory remarks, he was particularly concerned at the situation of women in detention. What steps were taken to protect women detainees from abuse? Were they held separately from men? Were the prison guards men and, if so, what steps were taken to prevent harassment and sexual abuse?

60. Under the 1965 Citizenship Act, a foreign woman who married a Tanzanian man acquired Tanzanian citizenship but a foreign man who married a Tanzanian woman did not. Had that discriminatory provision been removed from the 1995 Citizenship Act?

61. Ms. EVATT said that, while she welcomed the introduction of multi-party democracy, she noted that many relics of former times had survived in the legal system and in practice. The Law Reform Commission had made specific recommendations in 1994 and 1995 concerning the reform of discriminatory legislation on the family, marriage, inheritance, custody, maintenance and other matters, but no action seemed to have been taken on those recommendations to date. The marriageable age was still different for men and women and, under customary law, it could be lower than 15 years of age for girls. Polygamous marriage was permitted and customary law discriminated against widows in matters of succession.

62. Was it true that many women were imprisoned for making illicit alcohol? Could Tanzanian women married to foreigners pass on their citizenship to their children on the same terms as men? Was the right of women to own land recognized in the draft land ownership legislation? Had steps been taken to abolish the Witchcraft Ordinance which enabled women to be detained on suspicion of witchcraft? Had marital rape and domestic violence been criminalized? What reasons were used to justify the imprisonment of unmarried pregnant women? Were unsafe illegal abortions the main cause of maternal mortality?

63. Her attention had been drawn to a number of laws that restricted the employment of women and she wondered whether it was true that the President could prohibit the employment of women in certain areas. As noted by the Committee following its consideration of the second periodic report, article 25 of the Constitution admitted the possibility of various forms of compulsory labour, in violation of the Covenant. She understood that a number of laws also provided for compulsory labour.

64. She inquired about the Sungusungu anti-crime groups, which had been accused of using excessive force against suspects. Did they still exist and, if so, what authority was exercised over them?

65. Ms. MEDINA QUIROGA said that, since the Covenant could not be directly invoked before the courts, the domestic remedies described in paragraph 16 of the report were extremely important. Petitions to the High Court were described as an effective remedy but she had been told that the requirement for three judges to be present for a court hearing led to long delays.

66. According to paragraph 18, when the High Court found a law or measure to be unconstitutional, it did not automatically declare it null and void but offered the Government or the authority concerned a chance to rectify its mistake. That did not sound like an adequate remedy for victims. How much time was allowed for corrective action and what happened if the authority concerned refused to act?

67. The delegation had stated that rubber bullets were to be used by the police in the future. Experience had shown that such bullets could cause a great deal of damage and she advised great caution in their use.

68. According to paragraph 51, capital punishment was not applied to minors under 18 years of age. Did the minimum age apply to the date on which the crime was committed or to the date of execution of the death sentence? Were any statistics available on the number of executions carried out?

69. She associated herself with Mr. Kretzmer's question about presidential powers under the Preventive Detention Act, with Mr. Klein's question regarding extradition and with Mr. Prado Vallejo's comments on corporal punishment.

70. The issue of customary laws and practices deserved more than the six lines accorded it in the report. The State party's second periodic report (CCPR/C/42/Add.12) contained a great deal of information about forthcoming activities but there was no follow-up thereto in the third periodic report. For example, paragraphs 46 and 47 of the second periodic report provided statistical information on girls in education but there were no statistics in the later report. She wished to know what progress had been made in the meantime.

71. Paragraph 51 of the earlier report announced that the Land Commission would look into the question of women's legal rights in respect of real property, but there again there had been no follow-up. Was it true that a land bill had been tabled in Parliament which would legalize certain customary laws that discriminated against women?

72. According to paragraph 55 of the second periodic report, a husband who was economically better off than his estranged wife could invoke that status to gain custody of the children. How much weight was given to the economic factor, which would generally militate against the mother? Had the situation changed in the meantime?

73. Rape in the United Republic of Tanzania was a felony in the case of minors under 14 years of age but girls under 12 years of age could get married and their marriage could be consummated from the age of 12. That struck her as a form of legalized rape. What was the authorities' response to the relationship between rape in prisons and imprisonment for out-of-wedlock pregnancies? What preventive measures had been adopted?

74. She associated herself with the questions that had been asked concerning abortion. One in 18 women risked death from complications relating to maternity. As only between 10 and 14 per cent of women used contraceptives, unwanted pregnancies were a major problem.

75. Was it true that the inter-party women's organization Baraza la Wanawake wa Tanzania, mentioned in paragraphs 25 and 30 of the report, had been deregistered and, if so, why?

76. Mr. SCHEININ apologized to the delegation for the late transmission of the list of issues. There had been no discrimination, however, since all delegations had been equally disadvantaged. Perhaps the Committee should review its policy in the matter.

77. The report conveyed the impression that the United Republic of Tanzania was engaged in an intensive process of promotion of human rights. There

seemed to be a tendency towards stagnation, however, and it was of the utmost importance that the momentum should be maintained and the recommendations of the Nyalali Commission implemented through the Law Reform Commission. There were provisions of the existing legislation that were clearly incompatible with international human rights standards, such as the Witchcraft Ordinance and the provisions regarding corporal punishment. The latter issue had been referred to in the Committee's previous concluding observations.

78. He associated himself with the questions asked by Ms. Evatt and Ms. Medina Quiroga concerning the rights of women. The prohibition against abortion was very strict, the only exception being preservation of the mother's life. A rape victim who was forced to carry her pregnancy to term was exposed to the risk of suicide, depression and maternal mortality. The right to life and the prohibition of inhuman treatment were both at issue. He asked for additional information on the enforcement of the law.

79. Female genital mutilation was a criminal offence but apparently continued in some regions. How frequent was the practice and how was the law enforced?

80. He understood that there were moves afoot to criminalize marital rape when a couple were separated but not during cohabitation. What was the justification for making such a distinction?

81. He associated himself with the questions asked by Mr. Prado Vallejo and Mr. Klein concerning the treatment of refugees. How were the rights recognized in articles 6 and 7 of the Covenant guaranteed in the case of persons facing deportation or extradition? He referred in particular to the 126 persons who had allegedly been handed over to the Burundi authorities in January 1997 and executed.

82. Mr. ANDO said that, although the report was deficient in some respects, it was important that the dialogue should continue, so that the Committee could help the Government of Tanzania to find ways of overcoming any difficulties it was encountering in improving the human rights situation there.

83. There had been some misunderstanding on the part of the delegation concerning the methodology used in considering reports. The procedure whereby the Committee adopted the list of issues at the beginning of each session in which a report was to be examined ought not to be new to Tanzania, since it had been followed on the occasion of the consideration of its second periodic report. However, the Committee would do its best to speed up the process, and he asked the delegation for its understanding if there had been a delay in the delivery of the list.

84. He associated himself with the point raised by Mr. Klein with regard to the situation of duality whereby written law ran side by side with customary law. The same point had been raised in the course of the examination of the second periodic report, but it appeared that the situation remained basically unchanged. If that was so, the Committee needed more information about the

application of customary law, so that it could identify areas where that law was not in compliance with the Covenant. That was particularly true in the area of gender equality.

85. The Emergency Powers Act and the Preventive Detention Act both gave the President very wide powers with regard to the detention of individuals. He understood that the Acts had been criticized, not only by the Committee but within Tanzania itself, and that amendments had been proposed. Again, the situation did not seem to have changed much, and he would be glad to learn what the prospects were of a solution to the problem.

86. He had understood from what the delegation had said that a proposal for a federal system had been rejected. He would appreciate a further explanation of the difficulties encountered in that regard and their implications for human rights.

87. Mr. POCAR said it was regrettable that the question of the Committee's methodology for considering reports should have been raised, since Tanzania's second report had been considered without giving rise to any problems. He was also disappointed in the report itself, which did not comply sufficiently with the Committee's guidelines, and fully supported the views expressed by Mr. Klein on that matter.

88. He noted that, since the submission of Tanzania's second periodic report, the situation appeared to have stagnated. In 1992, the Committee had recommended, first, that a clear legal basis be provided for giving full effect to the provisions of the Covenant and, secondly, that provisions of the Constitution and national law that were not in conformity with the Covenant should be amended. He did not see any substantial change in the provisions concerned, notably those governing the state of emergency.

89. Paragraph 49 of the report stated that there was a "range of safeguards" guaranteeing the protection of those who faced the death penalty, such as the right of appeal. It then stated that the convicted person could appeal to the President to commute the sentence. Did that right of appeal represent the full range of safeguards available? He would also appreciate some clarification regarding the statement in paragraph 51 on the application of the death penalty to minors.

90. He was very concerned about the use of corporal punishment in Tanzania. There were also a number of articles of the Covenant, notably articles 7 and 9, that were not being fully respected in regard to the treatment of refugees and asylum seekers. He would like to know more about the legal provisions governing those matters.

91. Mr. EL SHAFEI said that, as had already been pointed out, the Bill of Rights of the Tanzanian Constitution did not fully reflect the rights enshrined in the Covenant, and he suggested that the Government should take the necessary steps to remedy that situation, as required by article 2, paragraph 2. He would also be glad if the delegation could explain any factors and difficulties impeding the full enjoyment of human rights in the

country. Were there any legal provisions prohibiting discrimination on the grounds of political opinion in Tanzania, and was it intended to take any affirmative action to overcome such discrimination?

92. Did all detainees have the right to correspondence and visits, and what was the frequency of such visits? Could prisoners speak to visitors without the presence of a guard, and were they allowed to receive private visits from their doctors? Was restriction of correspondence and visits used as a punishment, and was correspondence censored? With regard to disciplinary matters, how were allegations investigated, who presided over the hearings, and did the detainee have the right to be represented by counsel? Was the corporal punishment of detainees legitimate, and if so, what form did it take and what was the frequency of its use?

93. Lastly, he associated himself with the questions asked concerning the application of customary law in Tanzania, and hoped to hear from the delegation what progress had been made by the Law Reform Commission on the issue.

94. Mr. MALAMBUGI (United Republic of Tanzania) thanked the members of the Committee for the clarification they had provided concerning the procedure used in preparing the list of issues. However he still thought that, if the Committee genuinely desired to establish a dialogue with the States parties and expected proper replies to be given to all the questions asked, it should find a way of ensuring that more time was allowed and that the list of issues was made available at an earlier stage.

95. Replying to the questions asked, he said that Tanzania did not yet have a constitutional court, although provision had been made for establishing one. Legislation was being reviewed on a day-to-day basis by the Law Reform Commission, whose recommendations were forwarded to the Attorney-General. The latter could, of course, exercise his discretion in deciding whether or not to accept them.

96. Reference had been made to the backlog of cases in the courts: that problem affected mainly the High Court, which could not give precedence to cases of accused persons awaiting trial because of the need to hear election petitions. The petitions had to be dealt with promptly enough to enable members of Parliament to exercise their functions within the five-year period of the life of Parliament.

97. On the question raised by Lord Colville, he said that in one instance the Government of Zanzibar had hired judges from Nigeria, but that was an exceptional case. By "acting" or "ad hoc" judges, he had meant persons who had the necessary legal qualifications to be appointed judges of the High Court (for example, practising lawyers), who were given a limited mandate to try a particular case. There was also the practice of giving extended jurisdiction to resident magistrates, who were also legally qualified persons with a number of years' experience, to enable them to try cases that they would not normally handle.

98. The period from the arrest of the accused to the time he came before the judge differed considerably in different cases, and could be as long as

two years. He emphasized that there was a difference between "arrest" and "detention": arrests were a normal procedure under the Criminal Procedure Code, whereas detention was an exceptional procedure used under the Preventive Detention Act. The Government was aware of the problem of delays caused by the backlog of cases, and had re-established case-management-flow committees to look into it.

99. A number of pieces of legislation had been recommended for review or repeal. They included the Preventive Detention Act, the Corporal Punishment Ordinance, the Deportation Ordinance, the Human Resources Deployment Act, and the Witchcraft Ordinance. He would provide the Committee with a full list of the instruments at a later stage.

100. Concerning the restriction on the establishment of political parties referred to by Mr. Prado Vallejo, it should be borne in mind that Tanzania was unique in being made up of two Governments, the Government of Zanzibar and the Government of Tanzania. In order to create that union, the people of both countries had had to sacrifice some of their sovereignty. The purpose of the Political Parties Act was simply to protect the union: although Tanzania had been a country for some 70 years, it still had problems of national cohesion and national identity. For the same reason, the Act prohibited the formation of political parties based on religious grounds.

101. In respect of paragraph 47 of the report, it was true that there had been no real development in the situation since the second periodic report had been considered. However, the President was currently de facto prohibited from denying anyone the right to life even in a state of emergency, and the articles of the Constitution on the matter had been forwarded to the Law Reform Commission for review and possible repeal. The Commission itself had criticized the extraordinary powers given to the President by the Emergency Powers Act.

102. Corporal punishment had, in the past, been abolished but had since been reinstated on the insistence of the law-enforcement officers. He was not convinced that corporal punishment could be said to constitute cruel, inhuman or degrading treatment or punishment.

103. On the question of incommunicado detention, he said that persons on remand were supposed to be brought before a magistrate within 24 hours of their arrest, although that did not always occur in practice. Officers failing in their duty in that respect could be charged with abuse of power. Detention under the Preventive Detention Act had been resorted to in only a very small number of politically sensitive cases, and was a legacy of the one-party system. He doubted whether it had been utilized since the adoption of the system of political pluralism.

The meeting rose at 1 p.m.